

Court of Appeals, State of Michigan

ORDER

Michigan Department of Transportation v CBS Outdoor Inc

Docket No. 278036

LC No. 07-707208-CC

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the order of the Wayne County Circuit Court, which dismissed the motion to review the necessity filed by defendants on collateral estoppel grounds, is REVERSED. In their motion, defendants asserted two arguments that are distinct from the issues resolved in the condemnation action filed by the Michigan Department of Transportation in 2004 involving other properties owned by defendant Walter Lubienski. Specifically, defendants claimed that the current condemnation action was for the private benefit of the Detroit International Bridge Company because the DIBC and MDOT had in 2004 contractually agreed that DIBC would purchase the properties, and then in 2006 further agreed that MDOT would acquire the properties through the power of eminent domain (if necessary) at DIBC's expense. Defendants also maintained that the taking of the properties in the current action was for the purpose of adding additional bridge spans to the Ambassador Bridge, which was a private benefit for the DIBC. Because these specific issues could not have been resolved in the 2004 condemnation action, and because the properties in the two condemnation actions are not the same, collateral estoppel does not "bar" defendants from asserting these arguments in their motion. See *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 667 NW2d 843 (2004). Accordingly, the trial court erred in dismissing the motion based on collateral estoppel and in not resolving the grounds asserted in the motion. Although MDOT raises a plausible argument that these grounds are not legally proper for challenging the necessity of acquisition in accordance with MCL 213.56(1) and *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 248-249; 701 NW2d 144 (2005), we believe that the trial court is the proper forum to initially resolve MDOT's contentions.

The motion to file a late answer is GRANTED.

Accordingly, the matter is REMANDED to the trial court for further proceedings in accordance with this order. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 07 2008

Date

Sandra Schultz Mengel
Chief Clerk